1943 **File No.** Children II/43

Legal Department

B BRANCH

Subject:— Rules and Notifications under the Bombay Children Act 1924.

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File No. Children II/43

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Office of the R.L.A.

The draft notification at page 5, as slightly ----- amended is in order.

Id/- N.K.D.
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For Remembrancer of Legal Affairs.

U.R.to H.D.(with H.D. file No. 2566/4), No. 1247,dated the 17th February 1943.

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NOTIFICATION.

Home Department.
Bombay Castle, 1943.

Bombay Children Act, 1924.

No. 2566/4. In exercise of the powers conferred by sub-section (1) of section 46 of the Bombay Children Act, 1924 (Bom. XIII of 1924) and rule 14 of the Bombay Children and Juvenile Courts Rules, 1936, the Government of Bombay is pleased to amend G.N., H.D., No. 2566/4, dated the 28th August 1940, as follows, namely:-

In column 3 of the Schedule appended to the said Notification, for the word "City" the word "Resident" shall be substituted.

By order of the Governor of Bombay,

Secretary to Government.

No. 2566/4
Home Department.
Bombay Castle, January 1943.

Copies forwarded with compliments to. -

The Registrar, High Court, Appllante side, Bombay
The Commissioner Central Divisions, (with reference to his endorsement No.A.D.M. O./289-III, dated 18th December 1942)
The Inspector General of Prisons, Province of Bombay.

P.T.O.

The District Magistrate, Sholapur, (with
reference to his letter No. 6548,
dated 9th December 1942),
The Sessions Judge, Sholapur,
The Chief Inspector of Certified Schools,
Province of Bombay,
The District Superintendent of Police,
Sholapur,

The R.L.S.
The A.G., Bombay,
The F.D.

Secy. to Govt. of Bombay, H.D.

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Office of the R.L.A.

The maximum period prescribed in the Defence of India Rules and the Indian Penal Code for the offences committed by the two offenders exceeds two years and therefore there is no objection to detaining them in the Yeravda Industrial School for the period of two years. As regards Nandappa Balappa, the Home Department draft G.R. directs that he should be detained in the School "pending further orders". The proviso to sub-section (2) of section 2b of the Bombay Children Act, 1924, contemplates that the detention should be for a specified period. From U.S.H.D.'s note dated the 9th March 1943 at pages 36-37 ante it appears that the intention is to send both the boys to the Yeradda Industrial School for a period of two years. In the case of Nandappa Balappa however it is proposed that at the end of two years Government should consider whether the period of detention should be further extended. The draft G.R. as revised provides for the detention of Nandappa Balappa for two years in the first instance.

2. The H.D.draft G.R. as amended is in order.

Id/- P.N.M.
13/4
Remembrancer of Legal Affairs.

U.R.to H.D.?No.2731,dt. the 14th April 1943.

MM 12/7-

Juveniles.
Report under Sec. 26 of the Bom. Children Act, 1924.
Nandappa Balappa,
Tuljaram Tukaram.

GOVERNMENT OF BOMBAY.

Home Department,
Resolution No. 6754/4.
Bombay Castle, March 1943.

Letter from the Special Judge, Bijapur, No. 3079, dated 18th December 1942.

Endt. by the Sessions Judge, Bijapur, No.43 dated 5th January 1943 addressed to the Superintendent, Bijapur District Prison.

Letter from Inspector General of Prisons, Province of Bombay, No.1190, dated 21st January 1943.

Letter from the District Magistrate, Bijapur, No. C.D.O., dated 18th February 1943.

RESOLUTION :- In exercise of the powers conferred by section 26 of the Bombay Children Act, 1924, Govt. is pleased to direct that :-

(1) the juvenile offender Tuljaram Tukaram at present kept in safe custody in the Bijapur District Prison, shall be detained in the Yeravda Industrial School for a period of two years;

(2) the juvenile offerner Nandappa Balappa at present kept in safe custody at present in the Bijapur District Prison, shall be detained in the Yeravada Industrial School for a period of

of two years in the first instance. Before the expiry of this period the Chief Inspector of certified Schools should obtain orders of Government as to whether the said Nandappa Balappa should be detained for a further period and if so on what conditions.

(3) Chief Inspector of certified Schools should also be requested to instruct the Superintendent, Yeravda Industrial School, to keep a special eye on the two juvenile offenders with a view to preventing them from spreading the contagion of their ideas.

By order of the Governor of Bombay,

Additional Secretary to Government.

To

The I.G.Prs., P. of B.,

The Special Judge, Bijapur, (with the case papers),

The D.M., Bijapur.,

The C.I.C.S., P. of B.,

The D.S.P., Bijapur.,

The Supdt., Bijapur Dist. Prison,

The Supdt., Yeravda Industrial School.

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Office of the R.L.A.

Section 22 of the Bombay Children Act, 1924 provides that notwithstanding anything to the contrary contained in any law no child shall be sentenced to death or transportaticon or committed to prison. The proviso to that section allows a child of 14 years of age or upwards to be committed to prison in certain circumstances. It will therefore follow that except in a few cases concerning a child of 14 years of age or upwards, there is generally no sentence of transportation or imprisonment for a child. As stated in R.L.A's opinion No. 4702 dated the 6th July 1943 in all cases of punishment under the Explosive Substances Act the punishment of fine is added to the punishment of transportation or imprisonment. In other words, no fine can be awarded where the sentence of imprisonment or transportation cannot be awarded. In the case of a child in virtue of the provisions of section 22 of the Bomb ay Children Act no sentence of imprisonment or transportation and consequently no sentence of fine can be awarded under the Explosive Substances Act. Under section 5 of the whipping Act in lieu of any other punishment and in the absence of

such other punishment, whipping cannot be imposed. A juvenile offender is defined in the section as an offender found by the court to be under 16 years of age, or in other words to be a child within the meaning of the Bombay Children Act. It thus follows that no child can be punished with whipping for offences under sections 3 to 6 of the Explosive Substances Act and that being the position, those sections cannot be included in a notification under section 5(b) of the Whipping Act. To achieve the object in view it will be necessary to amend section 22 of the Bombay Children Act so as to prevent that section from affecting the normal operation of section 5 of the ~~of section 5 of the~~ Whipping Act. As regards the inclusion of section 128 of the Railways Act in the notification under section 5(b) of the Whipping Act, the section had been originally so included by the Government of India in its notification No. 1650 dated the 27th September 1920. The inclusion was then applicable to all Provinces generally, and also to Bombay where section 22 of the Bombay Childfen Act, 1924 had not by then been enacted. The position now is however different.

2. As regards the point raised by Secretary, H.D. in his note dated 27th July 1943 at pages 18-19 ante, attention is invited to R.L.A.'s opinions No. 51-Confl. dated 22nd March 1932 and No. 2989 dated 7th June 1932. Sub-section (1) of section 27 of the

Bombay Children Act provides that where a child charged with any offence is tried by any Court, and the Court is satisfied of his guilt, the Court shall take into consideration the manner in which, under the provisions of this or any other Act enabling the Court to deal with the case, the case should be dealt with. The section then goes on to prescribe the various methods of dealings with children charged with offences. One of the methods prescribed by that section is sentencing the offender to caning (see clause (ee)). "Caning" is defined in section 3(k) as meaning the punishment authorised under the Whipping Act, 1909 and inflicated with a cane, less than half an inch in diameter, as directed by the Provincial Government under section 392 of the Code of Criminal Procedure, 1898. In his first opinion referred to, R.L.A. has taken the view that under section 27(1)(ee) of the Bombay Children Act the sentence of caning cannot be passed for an offence not included in the notification issued under section 5(b) of the Whipping Act, The sentence of caning is to be passed only in cases in which the Court is authorised to pass it either

under the Bombay Children Act or some other Act. The Bombay Children Act does not prescribe caning as an ordinary sentence for all offences.

The only relevant Act is the Whipping Act, which prescribes in what cases the offender can be punished with whipping. According to the R.L.A's opinion the sentence of caning can be passed under section 27(1)(ee) only if authorised by the Whipping Act. In his next opinion the R?.L.A. has held that the Court can in cases which fall within sub-section (2) ofsection 27 impose a sentence of caning in default of the payment of a fine. In a case falling under sub-section (2) of section 27 the definition of caning does not stand in the way. But even in this case the sentence of whipping can be awarded only in the circumstances mentioned in sub-section (2) ofsection 27 i.e. where the child is charged with an offence punishable with fine only and is dealt with under clause (f) of sub-section (1) of section 27 and in no other case. In short, the Bombay Children Act does not permit a Court to award a sentence of caning generally. If the intention is that the child should be awarded the punishment of whipping in any case, it would be necessary to amend the Bombay Children Act. There is no other way out of the difficulty.

Encl- P.N.M. 12/10
Remembrancer of Legal Affairs.
U.R.to H.D., No.6866, dated the 14th October 1941
MM 12/7-